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Attorneys for Defendants K-M Industries
Holding Co. Inc.; K-M Industries Holding Co.
Inc. ESOP Plan Committee; and CIG ESOP Plan Committee

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

THOMAS FERNANDEZ et al.,)	Case No. C 06-07339 CW
)	
Plaintiffs,)	DECLARATION OF TERENCE F. YOUNG
)	ESTABLISHING THAT INFORMATION
vs.)	DESIGNATED BY PLAINTIFFS IN
)	SUPPORT OF MOTION FOR CLASS
K-M INDUSTRIES HOLDING CO., INC, et al.)	CERTIFICATION IS SEALABLE
)	
Defendants.)	CIVIL L. R. 79-5(d)
)	
)	
)	

I, Terence F. Young, declare:

1. I am an attorney licensed to practice in the State of California and before this Court. I am associated with Lovitt & Hannan, Inc., attorneys for Defendants K-M Industries Holding Co. Inc., K-M Industries Holding Co. Inc. ESOP Plan Committee, and CIG ESOP Plan Committee in this matter. I have custody of the relevant files of Lovitt & Hannan related to this action and am familiar

1 with the contents thereof. I make this declaration pursuant to L.R. 79-5(d) to establish that certain
2 documents designated by defendants to be confidential and submitted by plaintiffs in support of
3 their motion for class certification should be sealed and not made part of the Court's public files.

4 2. K-M Industries Holding Co. Inc. (the "Company") is a privately-held corporation
5 comprising two operating subsidiaries, Kelly-Moore Paint Company and Capital Insurance Group.
6 The Company maintains its financial and accounting records, internal organization, and other
7 materials related to the operation and operating results of the Company in strictest confidence and
8 treats such matters as trade secrets. The Company's shares are not traded publicly and the estimated
9 values of those shares is likewise a closely-guarded trade secret of K-M Holdings. Both of the
10 Company's subsidiaries are engaged in highly-competitive industries. Revealing such confidential
11 information in the public records of this Court could potentially harm the privacy interests of K-M
12 Industries and put it at a competitive disadvantage.

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14 3. Plaintiffs' Exhibit 2: The Confidential portion of Plaintiffs' Exhibit 2 (Bates Stamp
15 MK001590) is the second page of the ESOP STOCK PURCHASE AGREEMENT dated October
16 13, 1998, that served to establish the first of the ESOPs that are the subject of this action. The
17 portion of the page that is confidential is the per share value of the shares being transferred and the
18 total purchase price for said shares that is set forth in paragraph 2(a). The internally-estimated value
19 of the Company's shares is a confidential trade secret. Attached is a copy of said page two with the
20 per share price and total purchase price redacted.

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22 4. Plaintiffs' Exhibit 3: The Confidential portion of Plaintiffs' Exhibit 3 is pages 249 and
23 250 of the Deposition of Joseph Cristiano dated April 8, 2008. Mr. Cristiano was formerly President
24 of Kelly Moore Paint Company. The questions asked and answers given relate to the subject of
25 financial effects of litigation against the Company by plaintiffs claiming personal injuries from
26 exposure to asbestos. Repeating the exact nature of those statements in this declaration would defeat

1 the purpose of maintaining their confidentiality. Kelly Moore has carefully maintained the
2 confidentiality of its internal discussions of the financial effects of such litigation and continues to
3 believe that the public revelation of such considerations would damage its public image and its
4 business.

5 5. Plaintiffs' Exhibit 4: Defendants withdraw their confidentiality designation of this
6 exhibit.

7 6. Plaintiffs' Exhibit 5: Plaintiffs' Exhibit 5 is the minutes of a combined meeting of the
8 Board of Directors and Shareholders of Kelly-Moore Paint Company. The confidential portions of
9 the exhibit are:

10 a. The second paragraph on page 2 comprising confidential information concerning
11 the sales and other income of the Company.

12 b. The third paragraph on page 2 comprising discussions of profit and loss of the
13 divisions of the Company.

14 c. The first full paragraph on page 3 comprising discussions of possible acquisitions
15 of competing companies by the Company.

16 d. The second and third full paragraphs on page 3 comprising discussions of profit
17 and loss of two other divisions of the Company.

18 e. The last paragraph on page 4 comprising discussions of compensation of directors.

19 Attached is a copy of said Exhibit with only the confidential information redacted.

20 7. Plaintiffs' Exhibit 7: Plaintiffs' Exhibit 7 is a chart of K-M Industries' corporate structure
21 including value of share holdings and stock transactions. It is maintained as confidential by the
22 Company.

23 8. Plaintiffs' Exhibit 8: The Confidential portion of Plaintiffs' Exhibit 8 is page 28 of the
24 Deposition of Peter Cazzolla dated March 19, 2008. Mr. Cazzolla is the President and Chief

1 Executive Officer of Capital Insurance Group. The questions asked and answers given relate to the
2 subject of financial effects of litigation against the Company by plaintiffs claiming personal injuries
3 from exposure to asbestos. Repeating the exact nature of those statements in this declaration would
4 defeat the purpose of maintaining their confidentiality. Kelly Moore has carefully maintained the
5 confidentiality of its internal discussions of the financial effects of such litigation and continues to
6 believe that the public revelation of such considerations would damage its public image and its
7 business.

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9 9. Plaintiffs' Exhibit 9: The Confidential portion of Plaintiffs' Exhibit 9 (Bates Stamp CIG
10 001871) is the second page of the ESOP STOCK PURCHASE AGREEMENT dated October 18,
11 1999, that served to establish one of the ESOPs that are the subject of this action. The portion of
12 the page that is confidential is the per share value of the shares being transferred and the total
13 purchase price for said shares that is set forth in paragraph 2(a). The internally-estimated value of
14 the Company's shares is a confidential trade secret. Attached is a copy of said page two with the per
15 share price and total purchase price redacted.

16
17 10. Plaintiffs' Exhibit 12: Defendants withdraw their confidentiality designation of this
18 exhibit.

19 11. Plaintiffs' Exhibit 15: The Confidential portions of Plaintiffs' Exhibit 15 are:

20 (a) two charts describing the ESOP transactions that are the subject of this action and
21 showing the values of the transferred shares and the percentages of the company that served as
22 consideration for the stock transactions.

23 (b) A list of elements of the purchase and sale of the company's Broken O Ranch

24 (c) Three pages of charts showing estimates of the Company's past and future asbestos
25 liability.

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1 The information in all of these pages is maintained as strictly confidential by the Company.

2 I declare under penalty of perjury under the laws of the United States of America that the
3 foregoing is true and correct.
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5 DATED: June 5, 2008
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Terence F. Young
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Exhibit 2

WHEREAS, Trustee wishes to purchase from Selling Shareholder, and Selling Shareholder wishes to sell to Trustee the Shares for the benefit of the employees of the Company who are participants in the Plan; and

WHEREAS, the parties desire to design said purchase and sale so that the Selling Shareholder will be entitled to the benefits of Section 1042 of the Internal Revenue Code; and

WHEREAS, the Company desires to provide a means for its employees to acquire a proprietary interest in it as an incentive for them to advance the business and affairs of the Company;

NOW, THEREFORE, in consideration of the promises and the respective agreements hereinafter set forth, Selling Shareholder and Trustee hereby agree as follows:

1. Sale of Stock. As of this date and subject to the terms and conditions of this Agreement, Selling Shareholder does hereby sell and deliver to Trustee, and Trustee does hereby purchase from the Selling Shareholder, the Shares.

2. Purchase Price.⁷

(a) In consideration for the transfer of the Shares as provided in Section 1, Trustee shall pay to Selling Shareholder an amount equal to

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per share, or a total of

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The Purchase Price shall be paid to Selling Shareholder in cash at the closing.

(b) The purchase price in Section 2(a) hereof is not more than the fair market valuation established as of the date of this Agreement. In the event that there is a final determination by the Internal Revenue Service, a court of competent jurisdiction or otherwise that the

Ex 2

Exhibit 5

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Upon motion duly made, seconded and unanimously carried, the Minutes of 1997 were approved as written respectively by the shareholders and the Board of Directors.

The Chairman thereupon introduced the President of Kelly-Moore Paint Company, Inc., Joseph P. Cristiano, who reviewed paint operations during 1997.

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The Southwest Division had

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The Company was pleased with continued strengthening of the personnel with additions to the staff of the Sales Department. There have also been strengthening of the training programs for store operations. In 1997 there was also a significant increase in sales of products to China which should increase even more in 1998.

Stores opened in 1997 include Novato, California; Cedar Park, Texas. In addition, we began operations in Ennis, Texas and Del Rio, Texas. In 1998 we have already opened operations in Dennison, Texas; San Marcos, Texas and Wasilla, Alaska. San Ramon, California will open in a few months. In 1998 we expect to have a relocation of our Berkeley, California store to Albany, California, and we expect to relocate our Reno, Nevada and Georgetown, Texas stores. During 1997, the following stores were closed: Springdale, Arkansas; Emeryville, California; and Federal Way, Washington. In 1997, we also combined the Seattle-Georgetown and Seattle-Airport

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Way stores along with the Seattle spray center operations. At Anchorage, Alaska, Sacramento-Raley, California, Hurst Texas and San Carlos, California, we also combined the spray center operations with that of the related store.

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The Chairman thereupon reported on the operations in 1997 of the California Capital Insurance Group and The Broken O Ranch in Montana.

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Upon a motion duly made, seconded and unanimously carried, the acts of the Directors and Executives for the year 1997 were ratified and approved by the shareholders.

The Chairman thereupon discussed the authorization of Joseph P. Cristiano and Stephen Ferrari to complete certain transactions without a special meeting of the directors. Upon a motion duly made, seconded and unanimously carried, the attached resolution dated April 21, 1998 discussing authorization to open and close bank accounts and authorization to purchase, sell, or lease real property for up to one million dollars (\$1,000,000) without a special meeting of the directors is ratified and approved as written.

Nominations were thereupon opened for Directors of the corporation. The names of William E. Moore, Desiree B. Moore, Christine M. McCall, Joseph P. Cristiano and Stephen A. Ferrari were placed in nomination. There were no further nominations. Upon motion duly made, seconded and unanimously carried, William E. Moore, Desiree B. Moore, Christine M. McCall, Joseph P. Cristiano and Stephen A. Ferrari were elected by the shareholders to serve as directors of the Corporation for the year 1998, and until their successors are elected. Special committees of the Board of Directors were discussed and none were created or appointed at the present time.

The Chairman thereupon discussed compensation of directors who are not salaried employees of the Company.

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Exhibit 9

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WHEREAS, Selling Shareholder desires to sell eight million four hundred thousand (8,400,000) shares of the Company's Class I-B Stock (the "Shares") to the Trustee; and

WHEREAS, Trustee wishes to purchase from Selling Shareholder, and Selling Shareholder wishes to sell to Trustee the Shares for the benefit of the employees of the Company who are participants in the Plan; and

WHEREAS, the parties desire to design said purchase and sale so that the Selling Shareholder will be entitled to the benefits of Section 1042 of the Internal Revenue Code; and

WHEREAS, the Company desires to provide a means for its employees to acquire a proprietary interest in it as an incentive for them to advance the business and affairs of the Company;

NOW, THEREFORE, in consideration of the promises and the respective agreements hereinafter set forth, Selling Shareholder and Trustee hereby agree as follows:

1. Sale of Stock. As of this date and subject to the terms and conditions of this Agreement, Selling Shareholder does hereby sell and deliver to Trustee, and Trustee does hereby purchase from the Selling Shareholder, the Shares.

2. Purchase Price.

(a) In consideration for the transfer of the Shares as provided in Section 1, Trustee shall pay to Selling Shareholder an amount equal to

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Purchase

Price shall be paid to Selling Shareholder in cash at the closing.

(b) The purchase price in Section 2(a) hereof is not more than the fair market valuation established as of the date of this Agreement. In the event that there is a final determi-

1 requesting that certain of those documents remain sealed as confidential, the Court orders as
2 follows:

3 The request of defendants to seal certain portions of the documents submitted by plaintiffs'
4 in support of Plaintiffs' Motion is granted, as follows:

5 1. Page 2 of Exhibit 2 (Bates Stamp MK001590) to Plaintiffs' Motion, the ESOP STOCK
6 PURCHASE AGREEMENT dated October 13, 1998, shall be filed in the redacted form provided by
7 defendants as an attachment to the Young Declaration;

8 2. Pages 249 and 250 of Exhibit 3 to Plaintiffs' Motion shall remain sealed and not be made
9 part of the public record.

10 3. The redacted portions of Exhibit 4 to Plaintiffs' Motion shall be made part of the public
11 record.

12 4. Pages 2, 3, and 4 of Exhibit 5 to Plaintiffs' Motion shall be filed in the redacted form
13 provided by defendants as an attachment to the Young Declaration;

14 5. Exhibit 7 to Plaintiffs' Motion shall remain sealed and not be made part of the public
15 record.

16 6. Page 28 of Exhibit 8 to Plaintiffs' Motion shall remain sealed and not be made part of the
17 public record.

18 7. Page 2 of Exhibit 9 to Plaintiffs' Motion (Bates Stamp CIG 001871), the ESOP STOCK
19 PURCHASE AGREEMENT dated October 18, 1999, shall be filed in the redacted form provided by
20 defendants as an attachment to the Young Declaration;

21 8. The redacted portions of Exhibit 12 to Plaintiffs' Motion shall be made part of the public
22 record.

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1 9. Exhibit 15 to Plaintiffs' Motion shall be filed as redacted by plaintiffs in their original
2 submission to the Court and the redacted portions shall remain sealed.
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4 DATED: _____
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8 Honorable Claudia Wilken
9 United States District Judge
10 Northern District of California
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